

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON,	)	No. 57691-7-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
OLIVER W. WEAVER,	)	OPINION ON REMAND
	)	(UNPUBLISHED)
	)	
Appellant.	)	FILED: June 1, 2010
	)	

Ellington, J. — On August 27, 2007, this court issued its opinion in this appeal, affirming Oliver Weaver’s convictions for second degree rape and second degree rape of a child with the consequence of impregnating a minor. Weaver also challenged his sentence, contending that the State offered no proof of his prior convictions and his silence in the face of the prosecutor’s statement of criminal history did not amount to an acknowledgement of his offender score. We rejected this argument and affirmed the sentence. In so doing, we disagreed with the opinion of Division II of this court in State v. Mendoza,<sup>1</sup> which held that the reference to “presentence reports” in the acknowledgement statute, RCW 9.94A.530(2), applies only to documents prepared by the Department of Corrections. Rather, we held Weaver’s failure to object to the prosecutor’s presentence report of criminal history constituted acknowledgement under

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<sup>1</sup> 139 Wn. App. 693, 162 P.3d 439 (2007).

the statute.

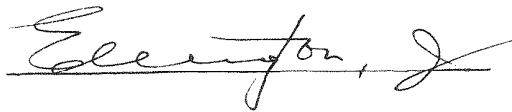
Before our opinion issued, the State sought to supplement the record on appeal to include the Department of Corrections statement of criminal history, which had been before the trial court but not made part of the court record. Because of our resolution of the issue, we denied this motion as unnecessary.

Weaver filed a petition for review. In April 2009, the Washington State Supreme Court affirmed Mendoza.<sup>2</sup> On July 8, the court granted Weaver's petition "only on the offender score issue" and remanded to this court "for reconsideration in light of" Mendoza. We granted the State's renewed motion to supplement the record, and requested supplemental briefing.<sup>3</sup>

We again affirm. The Department of Corrections criminal history report was before the court and was not objected to. Under Mendoza, therefore, Weaver acknowledged his offender score and cannot now object to it.

Weaver seeks to advance a new argument, alleging a double jeopardy violation. We agree with the State that this argument must be raised in a personal restraint petition.


Affirmed.



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<sup>2</sup> State v. Mendoza, 165 Wn.2d 913, 205 P.3d 113 (2009).

<sup>3</sup> In the interim, one member of the panel, Judge J. Coleman, retired.



No. 57691-7-I/3

WE CONCUR: